STATE OF CALIFORNIA

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August 17, 2000

Honorable Joseph F. Pitta
Monterey County Assessor
P. O. Box 570
Courthouse
Salinas, California 93902

***Attention:***
***Supervising Appraiser***

Dear Mr. :

This is in response to your letter to Assistant Chief Counsel Larry Augusta concerning the taking of certain real property in Monterey County by the California Department of Transportation, and the proper application of specific portions of Section 462.500 of Title 18 of the California Code of Regulations (Property Tax Rule 462.500) to the property purchased as a replacement for that property taken.

You advise that the taken property consisted of a 65,658 square foot lot with commercial zoning. The property had a 1,340 square foot store, estimated to have been built in the 1920's; an 1140 square foot barn; a 3,200 square foot, open-sided, steel structure used for the storage of hay; and a mobile home used for residential purposes. The mobile home was licensed by the state, and not assessed locally by the assessor. The assessor, however, did assess the real property "site value" of the residence.[1] You further advise that the taken property was also used for the retail business of selling livestock feed. The total assessed value for the property was $68,284 as of January 1, 1999.

The taken property was acquired by the California Department of Transportation (Caltrans) under threat of condemnation. The owner acquired a replacement property on October 15, 1999, for $655,000, consisting of a 9.981 acre lot with a 2,621 square foot home of good quality construction, together with a storage and office structure of 3,360 square feet. The zoning is rural residential and is clearly understood to exclude commercial activity. The owner moved the open-sided, steel structure from the taken property to the replacement property.

[1] Adjusted base year value of site was $2,947.

You pose several questions, primarily related to the comparability of the value and the use of the replacement property to that of the taken property. These present issues of fact which, ultimately, must be determined by the assessor. However, we offer the following observations.

To place these questions in context, Article XIII A, Section 2(d) of the California Constitution provides in pertinent part:

> For purposes of this section, the term, "change in ownership" does not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions . . . .

Revenue and Taxation Code Section 68 and Board of Equalization Property Tax Rule 462.500 implement Article XIII A, Section 2(d). With respect to the value comparison of the properties, Section 68 provides in part:

> The adjusted base year value of the property acquired shall be the lower of the fair market value of the property acquired or the value which is the sum of the following:
>
> > (a) The adjusted base year value of the property from which the person was displaced.
> > (b) The amount, if any, by which the full cash value of the property acquired exceeds 120 percent of the amount received by the person for the property from which the person was displaced.

In this regard, the Legislature has stated that it "finds and declares that it is the intent of the people in enacting subdivision (d) of Section 2 of Article XIII A of the California Constitution to permit taxpayers to use the base year value of the property from which the taxpayer was displaced as the base year value of the property acquired, in cases where the full cash value of the property is no more than 20 percent greater than the value received by the taxpayer for the property from which the taxpayer was displaced." Stats. 1983, Ch. 662, §1. Property Tax Rule 462.500(d) similarly sets forth the procedure to be used by the assessor in determining the appropriate adjusted base year value of the comparable replacement property. Paragraph (d)(1) requires the assessor to "compare the award or purchase price paid by the acquiring entity for the property taken or acquired with the full cash value of the comparable replacement property."

However, under the facts you present, the actual amount of the "award or purchase price paid . . . for the property taken or acquired" is open to some debate. The original Caltrans appraisal of the property taken was $450,000. You are advised by the Caltrans Right of Way

Agent handling the case that this amount represented the value of the land, and assumed no value for the improvements. However, in the copy of the letter from the Right of Way Agent enclosed with your letter, it is reported that the owner "strongly rejected that amount when offered by the State." "A Relocation Appraisal for 'supplemental purchase of housing' was then offered in addition to the $450,000. The supplemental amount was $205,000 based upon a residential property then listed at $350,000. [¶] [The owner] then had a total of $655,000 to invest for relocation purposes."

Similarly, the Right of Way Contract between the State and the owner provides that "The State shall . . . Pay the undersigned grantor(s) the sum of $450,000 for the property or interest conveyed . . ." However, later paragraphs provide:

> 4. It is agreed by and between the parties hereto that in addition to the payment provided in clause 2. (A) above [the $450,000] grantor will also be entitled to a sum not to exceed $205,000 as a relocation purchase supplement. Payment of said $205,000 will be made separately and Grantor understands that purchase of a replacement property must be equal to or greater than $655,000 to receive the maximum $205,000 purchase supplement.
>
> 5. It is understood between the parties hereto that Grantor considers the market value of the property being acquired by the State as $655,000 which is the sum of the amount shown in clause 2. (A) ($450,000) and the relocation purchase supplement in the amount of $205,000. Settlement by Grantor for said total amount of $655,000 was considered a settlement in compromise by Grantor and avoided the expense of eminent domain litigation.

The question presented, then, is whether the "award or purchase price paid by the acquiring entity for the property" was $450,000 or $655,000? Put another way, was the $205,000 "relocation purchase supplement" paid as part of the purchase price for the property, or for some other purpose? This is important, because paragraph (b)(4) of Rule 462.500 provides that:

> (4) "Award or purchase price" means the amount paid for "replaced property" but shall not include amounts paid for relocation assistance or any thing other than the replaced real property.

Neither the Right of Way Contract nor the Right of Way Agent's letter provides the answers to these questions. As noted, however, paragraph 5 of the Right of Way Contract discloses that the taxpayer considered the value of the taken property to be $655,000, and in your letter, you advise that the Right of Way Agent indicated that there had been a "second appraisal" by the Department of Transportation, which was never completed due to time constraints, that would have determined that an appraised value much higher than the $450,000 was appropriate. Thus, it is possible that more than $450,000 was actually paid for the taken property. Although the taxpayer ultimately has the burden of proof as to the amounts paid for the property, since the goal of eminent domain proceedings is to fairly compensate property owners whose property is taken for public purposes, an appraisal by your office of the fair market value of the property as of the date of conveyance would be a strong indicator of the actual amount paid for the property itself, as opposed to payment for relocation or for some other purposes. In other words, if the fair market value of the property approximated $450,000, that would be strong evidence that the $205,000

amount was paid for something other than the property. Conversely, if the fair market value of the property approximated $650,000, that would indicate that the $655,000 was "paid for the property taken or acquired."

You next ask about the proper application of Rule 462.500(c) in light of the Right of Way Agent's opinion relating to the total value of the property residing in the land. We assume this question is asked with reference to the ability to provide transferred base year value to the structures of the replacement property. Initially, we would observe that your conclusions after addressing the purchase price portion of the matter, discussed above, may shed light on the issue of whether any part of the purchase price represented value of improvements. It may be that the increase in the amount paid by Caltrans for the property was, in part, for improvements on the property. Certainly your appraisal would reflect this. However, it is the adjusted base year value of the taken property, land and improvements, that is relevant and that would be transferred to the comparable replacement property. As such, it does not matter how the purchase price may have been allocated, or whether it was even allocated at all.

Addressing both this issue and your question concerning the proper application of subdivision (c) of Rule 462.500 to this transaction, I am enclosing the memo supporting Proposed Annotation No. 200.0360 (Nauman 2/29/00 Memo), discussing how Rule 462.500 and our previous opinions have supported the proportionate, pro-rata transfer and allocation of base year value from the taken property to comparable portions or units of replacement properties. Hopefully, this will assist you in determining what portions, if any, of the adjusted base year value of the taken property could properly be transferred to the replacement property.

Rule 462.500(c), as applied to the facts you present, does, however, raise an important issue which you do not specifically address in your letter. As noted above, the Constitution requires that the replacement property qualifying for transfer of base year value treatment under the eminent domain situation be "comparable" to the property replaced, and defines "comparable" as "similar in size, utility and function." Rule 462.500(c) explains and clarifies this requirement as follows:

> Replacement property, acquired by a person displaced under circumstances enumerated in (a), shall be deemed comparable to the replaced property if it is similar in size, utility, and function.
>
> (1) Property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning.
>
> * * *

Here, the facts you present indicate that the taken property was zoned "commercial", while the replacement property is zoned rural residential and is understood to exclude commercial activity. "Commercial" and "Rural Residential" are not similar zoning restrictions. In fact, they are quite dissimilar. This raises a question as to whether the replacement property is similar in function to the taken property for purposes of this Rule. We note that, in the Right of Way Agent's letter, he describes the business activity at the taken property as "only marginal", and reports that "for the most part, the property served as a rural residence for his family." As we note in the 2/29/00 memo on which Proposed Annotation 200.0360 is based, similarity "is measured by

comparing the *actual* use of the property taken, with the *actual or intended* use of the replacement property." Therefore, to the extent that the property taken was put to a residential use, its adjusted base year value attributable to the portion devoted to that use could be transferred to the replacement property used for residential purposes. Apparently, the residence was a licensed mobilehome under the facts you presented. There was no adjusted base year value of the taken property attributable to residential *improvements*, and only the adjusted base year value of the "site" of the residence (mobilehome) could be transferred to the residential land of the replacement property. See Annotation No. 200.0340 - C 4/17/89.

Finally, you inquire about the proper procedure of handling the steel structure. Since this structure was moved from the taken property to the replacement property, it seems reasonable to simply transfer the adjusted base year value attributed to that structure, together with the value of the real property reasonably utilized therewith, to the new location.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

*/s/ Daniel G. Nauman*

Daniel G. Nauman
Senior Tax Counsel

Enclosure

DGN:lg
Precedent/Emdomain/00/02dgn.doc

cc: Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Charles Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70